IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

THIRSTY BOY INC. 31878 Camino Capistrano, Suite 101 San Juan Capistrano, CA 92675, Plaintiff, v. THUMB.COM, an Internet domain name, and JOHN DOE, Defendants.	Civil Action No. __________________

VERIFIED COMPLAINT

Plaintiff Thirsty Boy Inc. d/b/a O Entertainment ("O Entertainment"), by counsel, alleges as follows for its Verified Complaint against Defendants:

NATURE OF THE SUIT

1. O Entertainment's claims in this case involve intellectual property theft by computer hacking—colloquially referred to as "domain name theft" or "domain name hijacking." To recover its valuable intellectual property, O Entertainment asserts *in rem* claims under the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), under 28 U.S.C. § 1655, and Virginia common law, and *in personam* claims under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707, and Virginia common law, arising from the unauthorized access to Plaintiff's secured computer account and the unauthorized transfer and theft of the thumb.com domain name (the "Defendant Domain Name").

2. O Entertainment seeks injunctive and other equitable relief as a result of the actions of a person of unknown identity who gained unauthorized access to O Entertainment's

domain name management account on a protected computer, transferred control of the Defendant Domain Name from O Entertainment's account, and thereby disabled O Entertainment's control of the Defendant Domain Name, causing irreparable injury to O Entertainment.

PARTIES

3. Thirsty Boy Inc. d/b/a O Entertainment is a California corporation with its principal place of business in San Juan Capistrano, California. O Entertainment was the registrant of the Defendant thumb.com domain name until on or about August 13, 2017, when the thumb.com domain name was improperly transferred from its domain name management account. O Entertainment was, and is, the rightful owner of the Defendant Domain Name.

4. Defendant thumb.com is an Internet domain name which, according to records in the Whois database of domain name registrations, is now improperly registered in the name of "Contact Privacy Inc. Customer 1241619504" with a mailing address of "96 Mowat Ave, Toronto ON M4K 3K1 CA". A copy of the current domain name registration record for thumb.com is attached as Exhibit A.

5. Defendant John Doe is a person of unknown identity who gained unauthorized access to O Entertainment's protected domain name management account and, without consent or authority, transferred control of Defendant Domain Name away from O Entertainment.

JURISDICTION, VENUE AND JOINDER

6. This action arises under the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), 28 U.S.C. § 1655, the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707, and related claims under the common law of Virginia.

7. This Court has original jurisdiction under 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a), 28 U.S.C. § 1367, 28 U.S.C. § 1655, and the doctrines of ancillary and pendent jurisdiction.

8. This Court has *in rem* jurisdiction over the Defendant Domain Name pursuant to 15 U.S.C. § 1125(d)(2)(A) and 28 U.S.C. § 1655.

9. *In rem* jurisdiction is appropriate under 15 U.S.C. § 1125(d)(2)(A)(ii)(I) because the registrant of the Defendant Domain Name is a privacy service and therefore O Entertainment cannot obtain in personam jurisdiction over a person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1)(A), and/or under 15 U.S.C. § 1125(d)(2)(A)(ii)(II) because O Entertainment, despite its due diligence, has been unable to find a person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1)(A). O Entertainment is providing notice, concurrently with the filing of this complaint, to the Defendants of its intent to proceed *in rem* against the Defendant Domain Name pursuant to 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(aa).

10. The Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(3) and (4), states that the *in rem* action, jurisdiction, and remedies created by the statute are "in addition to any other civil action or remedy otherwise applicable" and "in addition to any other jurisdiction that otherwise exists, whether in rem or in personam."

11. *In rem* jurisdiction is appropriate under 28 U.S.C. § 1655 because the thumb.com domain name is property situated in this district, O Entertainment is asserting its claim of ownership to the thumb.com domain name and seeking removal of the cloud on the title of the domain name, and because Contact Privacy Inc. Customer 1241619504 is not subject to personal jurisdiction in this Court.

12. O Entertainment's claims against John Doe for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707, and for conversion, are based on John Doe's unauthorized access to and alteration of computer records maintained on protected computers for the domain registry located within the district so as to effectuate the theft of the Defendant Domain Name.

13. John Doe directed the acts complained of herein toward the district and utilized instrumentalities in the district in that John Doe gained unauthorized access to O Entertainment's domain name management account and associated computer records and thereafter, without authorization, caused the domain name registration records maintained in the district by VeriSign, Inc. to be altered so as to transfer control of Defendant Domain Name away from O Entertainment.

14. Venue is proper in this District pursuant to 15 U.S.C. § 1125(d)(2)(C), 28 U.S.C. § 1391(b)(2), and 28 U.S.C. § 1655 in that the Defendant Domain Name is property situated in this district and pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this district.

15. Joinder of the Defendant Domain Name and Defendant John Doe is proper under Fed. R. Civ. P. 20(a)(2) in that the claims set forth herein arise out of the same series of transactions and the same questions of law are common to all of the Defendants.

O ENTERTAINMENT'S RIGHTS

16. O Entertainment is a visual entertainment and media company, founded by Academy Award-nominated writer, producer, director, actor, and comedian Steve Oedekerk, that has produced studio live action and animated theatrical feature films, hit television series, and successful viral digital content.

17. O Entertainment has created and distributed the world famous THUMB characters and film titles worldwide since 1999. O Entertainment's THUMB titles include Thumb Wars: The Phantom Cuticle, The Godthumb, Bat Thumb, Frankenthumb, The Blair Thumb, Thumbtanic, and Thumb Debate '08. The titles have been distributed on domestic and international broadcast television and cable networks, such as the UPN Network, Showtime, and Cartoon Network, on VHS and DVD, and online—as shown by the following examples.

THUMBTANIC
Stevio Oedekerko's
The Godthumb
STEVE OEDEKERK PRESENTS
BAT THUMB
A STEVE OEDEKERK FILMETTE
THE BLAIR THUMB
FRANKENTHUMB

18. O Entertainment has owned and operated the thumb.com domain name for approximately 18 years. Attached as Exhibit B is an archived copy of the Whois record for the thumb.com domain name from August 26, 2002, identifying O Entertainment as the registrant of the domain name.

19. O Entertainment used the thumb.com domain name in U.S. commerce in association with its visual entertainment products and services, including sale of THUMB DVDs, display of streaming and downloadable THUMB video content, and distribution of information and services relating to O Entertainment and its THUMB characters and titles.

20. Visitors to the thumb.com site encountered an introductory video announcing that it is "created with THUMBATION©" and a button to "click to enter the official thumb site."

21. For approximately 10 years, O Entertainment has maintained the thumb.com domain name in a domain name registration account with eNom, Inc. operating under the name Bulk Register.

22. O Entertainment configured its account with Bulk Register to automatically renew such that O Entertainment would retain ownership of the thumb.com domain name until it took affirmative actions to terminate its registration. Attached as Exhibit C is an archived copy of the Whois record for the thumb.com domain name from August 11, 2017, identifying O Entertainment as the owner of the domain name and reflecting a registration expiration date of July 30, 2018.

23. O Entertainment was the registrant of the thumb.com domain name until on or about August 13, 2017, when the domain name was stolen from O Entertainment.

24. O Entertainment is entitled to common law trademark protection in the THUMB and THUMB.COM marks by virtue of its use of the marks in U.S. commerce in association with THUMB product sales and entertainment production and information services.

25. John Doe's unauthorized transfer and subsequent misuse of the Defendant Domain Name further demonstrates that the THUMB.COM mark is entitled to trademark protection.

26. As a stolen domain name, no subsequent registrant may acquire title to the Defendant Domain Name that is superior to O Entertainment's title to the thumb.com domain name.

UNLAWFUL TRANSFER AND REGISTRATION OF THE DOMAIN NAME

27. A 2015 report by the National Small Business association found that 42% of small businesses had been the subject of computer hacking.

28. O Entertainment's claims in the present case involve one of the most recent iterations of such computer hacking actions—colloquially referred to as "domain name theft."

29. O Entertainment maintains a domain name management account with ICANN-accredited registrar eNom, Inc. operating under the name Bulk Register.

30. O Entertainment's domain name management account with Bulk Register is maintained on a protected computer and access to the account should be restricted to only those persons that possess O Entertainment's user name and password.

31. On September 8, 2017, O Entertainment noticed that the Defendant Domain Name was missing from its Bulk Register domain name management account.

32. Immediately after discovering the theft of the Defendant Domain Name, O Entertainment called Bulk Register, who indicated that on August 5, 2017, a transfer of the Defendant Domain Name to Google Domains was executed, and that the transfer closed on August 13, 2017. The phone representative directed O Entertainment to send an email to Bulk Register's Domain Transfer Disputes department, which it did.

33. On September 11, 2017, "Rich," a compliance officer at eNom sent an e-mail to O Entertainment indicating that eNom had opened an investigation into the matter.

34. A search of O Entertainment's administrative e-mail account reveals that O Entertainment never received a notification from eNom or Bulk Register that the Defendant Domain Name was being transferred. Such a domain name transfer notification email is required by ICANN.

35. On information and belief, John Doe obtained unauthorized access to O Entertainment's domain registrar account and manipulated the computer records to obtain the transfer of the Defendant Domain Name through an "account transfer" within Bulk Register or

other surreptitious manner intended to avoid detection by O Entertainment.

36. On information and belief, John Doe prevented O Entertainment from receiving electronic communications seeking approval for the transfer of the Defendant Domain Name and obtained unauthorized access to such electronic communications so as to approve the transfer.

37. When the Defendant Domain Name was transferred by John Doe without authorization, the domain name registrant information was changed and the technical settings for the domain name were changed thereby disabling O Entertainment's ability to use and control the domain name and associated website.

38. The registration and use of the Defendant Domain Name by John Doe and/or Contact Privacy Inc. Customer 1241619504 is without authorization from O Entertainment.

39. The Defendant Domain Name does not reflect the trademark or intellectual property rights of John Doe or Contact Privacy Inc. Customer 1241619504.

40. On information and belief, the Defendant Domain Name does not reflect the legal name of John Doe or Contact Privacy Inc. Customer 1241619504.

41. John Doe and/or Contact Privacy Inc. Customer 1241619504 have not engaged in bona fide noncommercial or fair use of O Entertainment's THUMB.COM trademark in a website accessible under the Defendant Domain Name and, to the contrary, the Defendant Domain Name currently displays pay-per-click advertisements and an offer to sell the Defendant Domain Name. A screenshot of the current website displayed at the Defendant Domain Name is attached hereto as Exhibit D.

42. John Doe provided material and misleading false contact information in the domain name registration when changing the registrant for the Defendant Domain Name from O Entertainment.

43. John Doe transferred the Defendant Domain Name without authorization from O Entertainment and thereby acquired a domain name which John Doe knew was identical to, and reflective of, O Entertainment's THUMB.COM mark.

44. In the event that Contact Privacy Inc. Customer 1241619504 is not John Doe, Contact Privacy Inc. Customer 1241619504 acquired the Defendant Domain Name at a price far below the market value of the domain name and with actual or constructive knowledge that the Defendant Domain Name had been stolen from O Entertainment.

45. In the event that Contact Privacy Inc. Customer 1241619504 is not John Doe, Contact Privacy Inc. Customer 1241619504 has refused to return the Defendant Domain Name to O Entertainment upon learning that it was stolen.

FIRST CLAIM FOR RELIEF (IN REM)
Violation of the Anticybersquatting Consumer Protection Act

46. O Entertainment repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

47. O Entertainment's THUMB.COM mark is distinctive and was distinctive prior to the time the Defendant Domain Name was transferred away from O Entertainment without authorization and thereby unlawfully registered to John Doe and/or Contact Privacy Inc. Customer 1241619504.

48. The aforesaid acts by John Doe and/or Contact Privacy Inc. Customer 1241619504 constitute registration, trafficking, and/or use of a domain name that is identical to O Entertainment's THUMB.COM mark, with bad faith intent to profit therefrom.

49. The current registrant of the Defendant Domain Name, Contact Privacy Inc. Customer 1241619504, is not subject to in personam jurisdiction under 15 U.S.C. § 1125(d)(2)(A)(ii)(I), and O Entertainment, despite its due diligence, has been unable to find a

person who would have been a defendant in a civil action under 15 U.S.C. § 1125(d)(1)(A).

50. The aforesaid acts constitute unlawful cyberpiracy in violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1).

51. The aforesaid acts have caused, and are causing, great and irreparable harm to O Entertainment and the public. Unless permanently restrained and enjoined by this Court, said irreparable harm will continue. Thus, pursuant to 15 U.S.C. § 1125(d)(2)(D)(i), O Entertainment is entitled to an order transferring the Defendant Domain Name registration back to O Entertainment.

SECOND CLAIM FOR RELIEF (IN REM)
Violation of 28 U.S.C. § 1655

52. O Entertainment repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

53. The thumb.com domain name is property situated in this district.

54. O Entertainment is the rightful owner of the thumb.com domain name and seeks to enforce its claim of ownership to the thumb.com domain name.

55. Through control of the domain name, John Doe and/or Contact Privacy Inc. Customer 1241619504 (if it is not John Doe) have placed a cloud on O Entertainment's title to the thumb.com domain name.

56. The Whois database indicates that the registrant of the Defendant Domain Name, Contact Privacy Inc. Customer 1241619504, is located in Canada. Therefore, the Defendant Domain Name cannot be personally served within the Commonwealth of Virginia.

57. O Entertainment is entitled to a declaration from the Court that it is the lawful owner and registrant of the thumb.com domain name and an order returning the thumb.com domain name.

THIRD CLAIM FOR RELIEF (IN REM)
Quiet Title

58. O Entertainment repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

59. O Entertainment has valid legal and equitable title to the Defendant Domain Name by virtue of its registration and ownership of the domain name since approximately 1999.

60. The Defendant Domain Name was stolen from O Entertainment and no subsequent registrant may acquire valid title to the domain name—whether or not any such registrant purports to be a bona fide purchaser.

61. Through control of the domain name, John Doe and/or Contact Privacy Inc. Customer 1241619504 (if it is not John Doe) have asserted a claim to the Defendant Domain Name that impedes O Entertainment's ownership and control of the domain name and constitutes a cloud on O Entertainment's title to the domain name.

62. If Contact Privacy Inc. Customer 1241619504 is not John Doe, then it acquired the Defendant Domain Name under circumstances through which it knew or should have known that the Defendant Domain Name was stolen including, without limitation, the purported purchasing of the domain name for a mere fraction of its value in the marketplace.

63. O Entertainment is entitled to a declaration from the Court that it is the lawful owner and registrant of the Defendant Domain Name and that there are no other valid claims against the title to the Defendant Domain Name.

FORTH CLAIM FOR RELIEF (IN PERSONAM)
Violation of the Computer Fraud & Abuse Act

64. O Entertainment repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

65. John Doe: (a) knowingly and intentionally accessed O Entertainment's domain name management account on a protected computer without authorization and thereby obtained information from the protected computer in a transaction involving an interstate or foreign communication (18 U.S.C. § 1030(a)(2)(C)); (b) knowingly and with an intent to defraud accessed O Entertainment's domain name management account on a protected computer without authorization and obtained information from the computer, which John Doe used to further a fraud and obtain something of value (18 U.S.C. § 1030(a)(4)); and (c) intentionally accessed O Entertainment's domain name management account on a protected computer without authorization, and as a result of such conduct caused damage and loss (18 U.S.C. § 1030(a)(5)(C)).

66. John Doe's unlawful actions have included causing the protected domain name registration records maintained in the district by VeriSign, Inc. to be altered so as to transfer control of Defendant Domain Name away from O Entertainment.

67. O Entertainment has suffered damages as a result of the conduct complained of herein and the loss of the Defendant Domain Name.

FIFTH CLAIM FOR RELIEF (IN PERSONAM)
Violation of the Electronic Communications Privacy Act

68. O Entertainment repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

69. On information and belief, John Doe intentionally accessed without authorization electronic communications sent by the domain name registrar to O Entertainment seeking O Entertainment's approval for the transfer of the Defendant Domain Name.

70. On information and belief, John Doe obtained such electronic communications and/or prevented O Entertainment's authorized access to such electronic communications while the communications were in electronic storage.

71. John Doe engaged in such actions with a knowing and/or intentional state of mind, and such actions constitute a violation of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2701, 2707.

72. O Entertainment has suffered damages including the loss of the Defendant Domain Name as a result of the conduct complained of herein and is entitled to injunctive relief, actual, statutory, and/or punitive damages, and attorney's fees under the Electronic Communications Privacy Act.

SIXTH CLAIM FOR RELIEF (IN PERSONAM)
Conversion

73. O Entertainment repeats and realleges each and every allegation set forth in the foregoing paragraphs, as though fully set forth herein.

74. O Entertainment is the owner of property rights in and to the Defendant Domain Name.

75. John Doe has wrongfully taken control of the Defendant Domain Name.

76. John Doe's wrongful exercise of dominion and control over the Defendant Domain Name deprives O Entertainment of use and control of the Defendant Domain Name in violation of O Entertainment's rights in and to the domain name.

77. To the extent that John Doe has subsequently transferred the Defendant Domain Name to a person or persons other than John Doe, such other person's wrongful exercise of dominion and control over the Defendant Domain Name deprives O Entertainment of use and control of the Defendant Domain Name in violation of O Entertainment's rights in and to the

domain name.

78. O Entertainment has suffered damages including the loss of the Defendant Domain Name as a result of the conduct complained of herein and is entitled to injunctive relief, actual, statutory, and/or punitive damages, and/or attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, O Entertainment respectfully requests of this Court:

1. That judgment be entered in favor of O Entertainment on its *in rem* claims under the Anticybersquatting Consumer Protection Act, 28 U.S.C. § 1655, and for quiet title and against the res Defendant thumb.com.

2. That judgment be entered in favor of O Entertainment on its *in personam* claims under the Computer Fraud and Abuse Act, the Electronic Communications Privacy Act, and for Conversion against Defendant John Doe.

3. That the Court order the Defendant Domain Name be returned to O Entertainment through VeriSign, Inc.'s transfer of the domain name from the current domain name registrar to O Entertainment's registrar of choice, eNom, Inc., and by eNom Inc.'s change of the registrant back to O Entertainment.

4. That the Court order an award of actual, statutory, and/or punitive damages, costs and reasonable attorney's fees; and

5. That the Court order an award to O Entertainment of such other and further relief as the Court may deem just and proper.

Dated: September 15, 2017

By: /s/ Attison L. Barnes, III /s/

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VERIFICATION

I, Steve Oedekerk, CEO of Thirsty Boy Inc., declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the facts contained in the foregoing Verified Complaint are true and correct.

Steve Oedekerk

9/14/2017

Date